DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8/26/2010 has been entered.

Election/Restrictions

2. Applicant's election with traverse of Group I in the reply filed on 6/20/2011 is acknowledged. The traversal is on the ground(s) that 1. the claims have been mischaracterized, 2. the claims are classifiable together, and 3. there is no serious burden upon the Examiner. This is not found persuasive for the following reasons.

3. The requirements of the Examiner are laid out in MPEP 808.02. The examiner must show by appropriate explanation one of the following: separate classification thereof, a separate status in the art when they are classifiable together, or a different field of search.

4. In this case, the examiner appropriately explained that Group I dealt with selecting a content source based on the server's ability to handle the connection. Group I is appropriately classified in 709/226. 709/226 deals with network resource allocation, e.g. "means or steps for apportioning resources to one or more computers on a network." The selecting of a client "based on the comparison of the performance

metrics for the content sources" is a "means or step for apportioning resources to one or more computers on a network."

5.   Group II is classified in 709/238. 709/238 is computer-to-computer data routing, or "means or steps for selecting a path via which the computers will transfer data." Group II dealt with "establishing the source with the shortest response time as a primary source of the content." A "shortest response time" is interpreted as a "network/logical distance" based on "the number of network hops, or the network cost between the source and destination" based on Applicant's specification, page 9, lines 3-5. Selecting a source based on a shortest response time which is based on a number of network hops or a network cost is a "means or step for selecting a path via which the computers will transfer data."

6.   Group I does not deal with selecting a path for transferring data. Group I deals with selecting a server based upon its ability to handle the connection, which is a server quality of service issue. Group II does not deal with selecting a server based on quality of service. Group II deals with selecting a server based on its distance, which is a routing issue.

7.   Even if, *arguendo*, Groups I and II were classifiable together, the examiner has shown each invention has a separate subject for inventive effort by disclosing the necessity of a separate field of search for the disparate limitations in Groups I and II.

8.   It is necessary to search Groups I and II separately. The ability to deal with the determination whether a server can handle a connection would be searched in 709/226, and the ability to determine whether a server is the shortest distance would be searched

in 709/238. Both inventions would require a different field of search, and different

search queries. The indicated different field of search is pertinent to the subject matter

in Groups I and II.

9.   Additionally, Applicant is not able to adequately assess what would or would not

be a serious burden upon the Examiner in examining Groups I and II. Group II's subject

matter is not similar enough to Group I in order to prevent a serious burden upon the

Examiner. The limitations of Group II dealing with a shortest path are not present in any

of the previously examined claims in Group I.

The requirement is still deemed proper and is therefore made FINAL.

10.   Claims 38-45 are withdrawn.

Response to Arguments

11.   Applicant's arguments with respect to claims 1-36 have been considered but are

moot in view of the new ground(s) of rejection.

Claim Objections

12.   Claims 25, 27 are objected to because of the following informalities:

13.   Claim 25 refers to "source selection code segment" instead of "the source

selection code segment" or "said source selection code segment".

14.   Claim 27 states "the communications interface is structured and arranged to

transmitting a stream request", instead of "to transmit a stream request".

15.   Appropriate correction is required.

Claim Rejections - 35 USC § 102

16.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

17.   Claims 1-8, 10-16, 18-26, 28-34, and 36 are rejected under 35 U.S.C. 102(b) as

being anticipated by Kenner et al. (US 6,003,030).

18.   In regard to claim 1, Kenner disclosed a method of enabling a client to access

content, the method comprising:

receiving, on a client, an instruction from a client application indicating a client

request to access content; (client application is player program, col. 14, line 19; client

request is request for video data; content is video data, col. 14, line 22)

accessing, by the client application and on the client, a list of content sources

capable of rendering the content for which access is requested by the client; (list of

content sources is list of available delivery sites, col. 8, line 25)

requesting, using the client application on the client, identical portions of the

content from each of the content sources in the list of the content sources; (col. 15,

lines 4-24, identical portions of the content is referenced clip, col. 14, line 62)

determining, using the client application on the client and based on requesting

the identical portions of the content, a performance metric describing an ability for the

content source to support the client as measured by the client between each of the at

least two of the content sources; (performance metric is SM parameter, col. 15, line 9)

comparing the performance metrics for the content sources; (col. 15, lines 14-

17)

selecting, using the client application on the client, among the content sources

based on the comparison of the performance metrics for the content sources to identify

a content source to be accessed by the client; and (col. 15, lines 10-17)

rendering, using the client application on the client, the identical portion of the

accessed content and a subsequent portion of content that follows the identical portion

of the accessed content from the selected content source. (col. 15, lines 39-46.

"rendering" is col. 14, line 22 - playback of video data. Accessed content is beginning of

file, subsequent portion of content is remainder of file)

19.   In regard to claim 2, Kenner disclosed the method of claim 1 further comprising

accessing the content source selected. (col. 15, lines 10-24)

20.   In regard to claim 3, Kenner disclosed the method of claim 1 further comprising

monitoring communications exchanged with the content source selected to determine a

selected connection state to determine if an alternate content source should be

accessed. (col. 15, lines 18-24 – selected connection state is whether clip is able to be

accessed, alternate content source is next-highest ranked Smart Mirror site)

21.   In regard to claim 4, Kenner disclosed the method of claim 3 further comprising

repeating the determining and selecting when the selected connection state indicates

that the alternate content source should be accessed. (col. 15, lines 18-24 – selected

connection state is whether clip is able to be accessed, alternate content source is next-

highest ranked Smart Mirror site)

22.   In regard to claim 5, Kenner disclosed the method of claim 3 further comprising monitoring the state of at least one of the content sources not selected from within the list of content sources so that the alternate content source may be selected when the connection state indicates the alternate content source should be accessed. (col. 15, lines 18-24 – selected connection state is whether clip is able to be accessed, alternate content source is next-highest ranked Smart Mirror site)

23.   In regard to claim 6, Kenner disclosed the method of claim 1 wherein receiving the list of content sources includes receiving the list of content sources from a host. (host is MSP 32, col. 8, lines 18-20)

24.   In regard to claim 7, Kenner disclosed the method of claim 6 wherein the list of content sources is received in response to authenticating. (col. 9, lines 36-45)

25.   In regard to claim 8, Kenner disclosed the method of claim 1 wherein determining the performance metric includes polling at least two of the content sources with a polling request. (col. 9, lines 56-65)

26.   In regard to claim 10, Kenner disclosed the method of claim 8 wherein determining the performance metric includes identifying a first content source with a response to the polling request that is received before other responses from other content sources included in the list of content sources. (col. 12, lines 26-50)

27.   In regard to claim 11, Kenner disclosed the method of claim 1 wherein determining the performance metric includes identifying a first content source able to sustain an identified throughput rate. (col. 12, lines 38-43)

28.   In regard to claim 12, Kenner disclosed the method of claim 11 wherein

identifying the first content source able to sustain the identified throughput rate includes

identifying the first content source able to sustain the identified throughput rate for a

specified duration. (col. 12, lines 38-43)

29.   In regard to claim 13, Kenner disclosed the method of claim 1 wherein

determining the performance metric includes identifying the content source with a

highest throughput rate. (col. 12, lines 38-43)

30.   In regard to claim 14, Kenner disclosed the method of claim 1 wherein

determining the performance metric includes ranking at least two of the content

sources. (col. 12, lines 38-43)

31.   In regard to claim 15, Kenner disclosed the method of claim 14 further

comprising using the ranking to select a backup content source to be accessed when

the content source selected for access experiences an interrupt condition. (col. 15,

lines 18-24, interrupt condition is file unable to be accessed)

32.   In regard to claim 16, Kenner disclosed the method of claim 14 further

comprising maintaining a relative ranking among at least two of the content sources not

selected by transmitting subsequent polling requests to the content sources not

selected. (col. 13, lines 15-19)

33.   In regard to claim 18, Kenner disclosed the method of claim 14 further

comprising switching to one of the content sources not selected from the list when

access to the content source selected is determined to be inferior to access available

using the content source that is accessed. (col. 15, lines 18-24)

34.   In regard to claim 19, Kenner disclosed a content access system comprising:

a client with a processor that comprises:

a content access code segment structured and arranged to receive an

instruction from a client application indicating a client request to access content;

(client application is player program, col. 14, line 19; client request is request for

video data; content is video data, col. 14, line 22)

a source selection code segment structured and arranged to:

access, by the client application, a list of content sources capable

of rendering the content for which access is requested by the client, and

(list of content sources is list of available delivery sites, col. 8, line 25)

request, using the client application on the client, identical portions

of the content from each of the content sources in the list of content

sources; (col. 15, lines 4-24, identical portions of the content is referenced

clip, col. 14, line 62)

a communications interface structured and arranged to determine, using

the client application on the client and based on requesting the identical portions

of the content, a performance metric describing an ability for the content source

to support the client as measured by the client between each of the at least two

of the content sources; and (performance metric is SM parameter, col. 15, line 9)

a selection code segment structured and arranged to:

compare the performance metrics for the content sources; (col. 15,

lines 14-17)

select, using the client application on the client, among the content

sources based on the comparison of the performance metrics for the

content sources to identify a content source to be accessed by the client;

and (col. 15, lines 10-17)

a rendering code segment structured and arranged to render, using the

client application on the client, the identical portion of the accessed content and a

subsequent portion of content that follows the identical portion of the accessed

content from the selected content source. (col. 15, lines 39-46. "rendering" is col.

14, line 22 - playback of video data. Accessed content is beginning of file,

subsequent portion of content is remainder of file)

35.   In regard to claim 20, Kenner disclosed the content access system of claim 19

further comprising a retrieval code segment structured and arranged to access the

content source selected. (col. 15, lines 10-24)

36.   In regard to claim 21, Kenner disclosed the content access system of claim 19

further comprising a first monitoring code segment structured and arranged to monitor

communications exchanged with the content source selected to determine a selected

connection state to determine if an alternate content source should be accessed. (col.

15, lines 18-24 – selected connection state is whether clip is able to be accessed,

alternate content source is next-highest ranked Smart Mirror site)

37.   In regard to claim 22, Kenner disclosed the content access system of claim 19

further comprising a repeating code segment structured and arranged to repeat

determining and selecting operations when the selected connection state indicates that

the alternate content source should be accessed. (col. 15, lines 18-24 – selected

connection state is whether clip is able to be accessed, alternate content source is next-

highest ranked Smart Mirror site)

38.   In regard to claim 23, Kenner disclosed the content access system of claim 19

further comprising a second monitoring code segment structured and arranged to

monitor the state of at least one of the content sources not selected from within the list

of content sources so that the alternate content source may be selected when the

connection state indicates the alternate content source should be accessed. (col. 15,

lines 18-24 – selected connection state is whether clip is able to be accessed, alternate

content source is next-highest ranked Smart Mirror site)

39.   In regard to claim 24, Kenner disclosed the content access system of claim 19

wherein the source selection code segment is structured and arranged to receive the list

of content sources from a host. (host is MSP 32, col. 8, lines 18-20)

40.   In regard to claim 25, Kenner disclosed the content access system of claim 24

wherein source selection code segment is structured and arranged to receive the list of

content sources in response to authenticating. (col. 9, lines 36-45)

41.   In regard to claim 26, Kenner disclosed the content access system of claim 19

wherein the communications interface is structured and arranged to transmit a polling

request to at least two of the content sources in the list of content sources. (col. 9, lines

56-65)

42.   In regard to claim 28, Kenner disclosed the content access system of claim 26

wherein the communications interface is structured and arranged to identify a first

content source with a response to the polling request that is received before other responses from other content sources included in the list of content sources. (col. 12, lines 26-50)

43.   In regard to claim 29, Kenner disclosed the content access system of claim 19 wherein the communications interface is structured and arranged to identify a first content source able to sustain an identified throughput rate. (col. 12, lines 38-43)

44.   In regard to claim 30, Kenner disclosed the content access system of claim 29 wherein the communications interface is structured and arranged to identify the first content source able to sustain the identified throughput rate for a specified duration. (col. 12, lines 38-43)

45.   In regard to claim 31, Kenner disclosed the content access system of claim 19 wherein the communications interface is structured and arranged to identify the content source with a highest throughput rate. (col. 12, lines 38-43)

46.   In regard to claim 32, Kenner disclosed the content access system of claim 19 wherein the communications interface is structured and arranged to rank at least two of the content sources. (col. 12, lines 38-43)

47.   In regard to claim 33, Kenner disclosed the content access system of claim 32 wherein the communications interface is structured and arranged to use the ranking to select a backup content source to be accessed when the content source selected for access experiences an interrupt condition. (col. 15, lines 18-24, interrupt condition is file unable to be accessed)

48.   In regard to claim 34, Kenner disclosed the content access system of claim 32

wherein the communications interface is structured and arranged to maintaining a

relative ranking among at least two of the content sources not selected by transmitting

subsequent polling requests to the content sources not selected. (col. 13, lines 15-19)

49.   In regard to claim 36, Kenner disclosed the content access system of claim 32

wherein the communications interface is structured and arranged to switch to one of the

content sources not selected from the list when access to the content source selected is

determined to be inferior to access available using the content source that is accessed.

(col. 15, lines 18-24)

Claim Rejections - 35 USC § 103

50.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

51.   Claims 9 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Kenner in view of Lumelsky et al. (US 6,377,996).

52.   In regard to claim 9, Kenner disclosed the method of claim 8. Kenner disclosed

polling multiple content sources. Kenner failed to disclose transmission of a stream

request. Kenner was a video on demand system in col. 14, lines 15-21.

53.   However, Lumelsky disclosed a stream can be requested by a client. Lumelsky,

col. 5, lines 29-31. Lumelsky performed this on a video on demand server.

54.   It would have been obvious to one of ordinary skill in the art at the time of

invention that since video on demand servers provided video streams, and Kenner

requested a video clip, the video clip in Kenner could be streamed as in Lumelsky in

order to start playback before receiving the entire clip as in Kenner.

55.   In regard to claim 27, Kenner disclosed the content access system of claim 26

Kenner disclosed polling multiple content sources. Kenner failed to disclose

transmission of a stream request. Kenner was a video on demand system in col. 14,

lines 15-21.

56.   However, Lumelsky disclosed a stream can be requested by a client. Lumelsky,

col. 5, lines 29-31. Lumelsky performed this on a video on demand server.

57.   It would have been obvious to one of ordinary skill in the art at the time of

invention that since video on demand servers provided video streams, and Kenner

requested a video clip, the video clip in Kenner could be streamed as in Lumelsky in

order to start playback before receiving the entire clip as in Kenner.

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58.   Claims 17 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable

over Kenner in view of Mandato (US 7,076,552)

59.   In regard to claim 17, Kenner disclosed the method of claim 14. Kenner

disclosed contacting multiple content sources, but failed to disclose maintaining multiple

connections simultaneously.

60.   However, Mandato disclosed multimedia services can be maintained with the use

of multiple connections. See Mandato, col. 3, lines 48-53.

61.   It would have been obvious to one of ordinary skill in the art at the time of invention to establish multiple connections in the Kenner system to allow for redundancy in case a server in Kenner failed to be connected, allowing for switching to a backup server instantaneously. See Kenner, col. 13, lines 15-19.

62.   In regard to claim 35, Kenner disclosed the content access system of claim 32. Kenner disclosed contacting multiple content sources, but failed to disclose maintaining multiple connections simultaneously.

63.   However, Mandato disclosed multimedia services can be maintained with the use of multiple connections. See Mandato, col. 3, lines 48-53.

64.   It would have been obvious to one of ordinary skill in the art at the time of invention to establish multiple connections in the Kenner system to allow for redundancy in case a server in Kenner failed to be connected, allowing forswitching to a backup server instantaneously. See Kenner, col. 13, lines 15-19.

Allowable Subject Matter

65.   Applicant may wish to contact the Examiner prior to filing a response in order to discuss possibilities to place the application in condition for allowance.

Conclusion

66.   The prior art made of record and not relied upon is considered pertinent to

applicant's disclosure.

67.   Beaumont et al.   US 6,959,333

68.   Ito   JP 2003108393A

69.   Rodriguez, Pablo et al. "Dynamic Parallel Access to Replicated Content in the

Internet." IEEE/ACM Transactions on Networking. Vol. 10, No. 4. IEEE Press. August

2002. 455-65.

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Jeffrey R. Swearingen whose telephone number is

(571)272-3921. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Andrew Caldwell can be reached on 571-272-3868. The fax phone number

for the organization where this application or proceeding is assigned is 571-273-8300.

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